

DEC 27 1983

ALEXANDER L. STEVAS,  
CLERK

**No. 82-1724**

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In The  
**Supreme Court of the United States**  
OCTOBER TERM, 1983

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STATE OF NEW YORK,

*Petitioner,*

vs.

ROBERT UPLINGER and SUSAN BUTLER,

*Respondents.*

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**ON WRIT OF CERTIORARI TO THE  
NEW YORK STATE COURT OF APPEALS**

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**PETITIONER'S OBJECTION TO MOTION OF  
AMERICAN PSYCHOLOGICAL ASSOCIATION,  
AMERICAN PSYCHIATRIC ASSOCIATION AND  
AMERICAN PUBLIC HEALTH ASSOCIATION TO  
FILE BRIEF AMICI CURIAE**

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Petitioner State of New York hereby respectfully files its objection, pursuant to Supreme Court Rule 36.3, to the motion made by the American Psychological Association, American Psychiatric Association, and American Public Health Association for leave to file a brief *amici curiae*. The motion and brief *amici curiae* were received by petitioner on December 19, 1983. Consent to file a brief as *amici curiae* had been requested of petitioner but refused on the ground that *amici* had no concrete, substantial interest in the decision of the case.

Petitioner respectfully requests that the Court deny the motion for leave to file the brief *amici curiae* because the American Psychological Association, the American Psychiatric Association, and the American Public Health Association have no legitimate interest in the instant case as demonstrated by the content of their proposed brief *amici curiae*. This brief con-

centrates almost exclusively on whether the State may outlaw homosexuality *per se*, with abundant scientific and medical authorities supporting the "naturalness" of deviate sexual behavior. No authorities or data are provided regarding the receptiveness of the general public to indiscriminate street solicitations. Thus, the brief *amici curiae* ignores totally the legal issue before the Court.

Clearly, the criminalization *vel non* of "private, consensual variant sexual practices" is not the question before this Court as framed in petitioner's brief. The matter for review is a New York statute that criminalizes certain conduct, wholly unrelated to the sexual preference of the solicitor. *Amici's* misunderstanding of the case even extends to a misquoting of the statute, referring to "deviant" instead of the statutory language "deviate".

The issue of the claimed constitutional infirmities of the statute has been very well briefed, with examples and authorities, by respondents Uplinger and Butler. The brief of *amici* will not assist the Court in any way in that it presents no relevant arguments or materials on the singular question to be decided, to wit, the constitutionality of New York Penal Law §240.35(3).

For all the foregoing reasons, petitioner respectfully requests this Court to deny the motion of the American Psychological Association, American Psychiatric Association, and American Public Health Association for leave to file a brief *amici curiae*.

Respectfully submitted,

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